

May 14, 2012

Chairman Julius Genachowski
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: Continuation of Cable Viewability Requirements for Digital Television
Stations
CS Docket No. 98-120

Dear Chairman and Commissioners,

The FOX Affiliates Association, which represents local television affiliates of the FOX television network (the "Fox Affiliates"), hereby offers its strong support for a three-year extension of the "viewability" rule for cable carriage of over-the-air DTV signals.¹ Continuation of the cable viewability rules is vitally important to all viewers of over-the-air broadcast programming and to free, over-the-air television broadcasters. Analog and hybrid analog/digital cable system subscribers continue to make up a large percentage of local TV audiences, and the Fox Affiliates, like all broadcasters, depend on access to those viewers to support advertising revenues that, in turn, support local news and information programming and other locally-oriented program services.

As the Commission has recognized repeatedly, the viewability rule is dictated by the plain meaning of the Congressionally-enacted and Supreme-Court approved mandatory carriage law.² Section 614(b)(7) of the Communications Act unambiguously requires cable operators to provide all of their subscribers with viewable signals for all local television stations eligible for

¹ See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, *Fourth Further Notice of Proposed Rulemaking and Declaratory Order*, CS Docket No. 98-120, FCC 12-18 (rel. Feb. 10, 2012) (the "Notice"). See also 76.56(d)(3), (5); Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, *Fourth Report and Order*, 23 FCC Rcd 13618 (2008). This letter is submitted pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206.

² See Carriage of Digital Television Broadcast Signals, CS Docket No 98-120, *Third Report and Order and Third Further Notice of Proposed Rulemaking*, 22 FCC Rcd 21064 para. 15, 16 (2007); *Notice*, para. 10; See also 47 U.S.C. § 534(b)(7); *Turner Broadcasting Systems, Inc. v. FCC*, 520 US 180 (1997).

mandatory carriage.³ The Communications Act makes no distinction between analog and digital cable subscribers and the Commission has no legal authority to do so. Permitting cable operators to require their analog and hybrid-system subscribers to purchase additional equipment to view local television signals would represent an abdication of the Commission's responsibility to enforce the Communications Act. Cable operators are bound by law to provide these signals to all consumers as part of the basic cable service package, and the Commission's rules must continue to require cable-operator compliance by extending the viewability requirement.

Expiration of the viewability rule would be a disaster for the 22% of cable households that continue to obtain analog or hybrid cable service. Without continuation of the viewability rule, this would mean that more than 12 million households would risk losing access to local television signals unless they were willing to pay their cable operator higher rates for additional equipment. Congress enacted Section 614(b)(7) precisely to protect basic cable customers from cable operators that wanted to drop local television stations. Absent the viewability rule, analog and hybrid cable subscribers will lose this key protection. It is the Commission's responsibility to make sure that doesn't happen.

Allowing the viewability rule to sunset will also damage consumers by weakening the over-the-air television broadcasting system. Many must-carry stations will immediately lose a sizable portion of their audience. These stations have suffered since the economy crashed in 2007 and they cannot afford the hit to their advertising revenues that would accompany loss of access to analog cable subscribers. This will lead to reduced local services as stations are forced to cut costs to cover the revenue gap. But this isn't just a problem for must-carry stations. Stations that obtain retransmission consent – like most Fox Affiliates – also could face audience and revenue losses because many retransmission consent agreements reference the requirements of the viewability rule. If the rule were to go away, cable operators likely would insist that they have no obligation to ensure retransmission consent signals are available to all subscribers. In that case, operators could require their analog customers to choose between paying more and receiving the full complement of local over-the-air signals or paying less and losing access. Either way, consumers lose by paying more and receiving further diminished local broadcast service.

The “problems” cable operators experience from providing over-the-air digital signals to analog subscribers do not justify compromising the consumer protections in the Communications Act. Indeed, any added expense is entirely a product of cable operators' decision not to transition to all-digital cable systems. Broadcasters completed their government-mandated digital transition nearly three years ago. Cable customers should not be punished because cable operators have elected to transition more slowly. The viewability requirement is fundamental to the health of over-the-air broadcasters, and cable operators' decision to continue providing

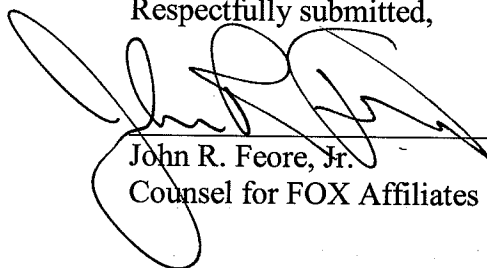
³ See 47 U.S.C. § 534(b)(7); *See also, e.g.*, Implementation of the Cable Television Consumer Protection and Competition Act of 1992, *Report and Order*, 8 FCC Rcd 2965, 2974, para. 32 (1993) (all must-carry signals must be available to all subscribers).

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analog service cannot justify damaging that system. The statute doesn't permit that result and no sound policy supports it.

As the *Notice* recognizes, sunseting the viewability rule will not change the requirements of Section 614(b)(7).⁴ Regardless of the rules, cable operators will remain required by statute to deliver viewable versions of every local television station to every one of their consumers. Eliminating the clarity that currently exists in the rules, however, will invite litigation that will further consume the scarce resources of local broadcasters and the Commission. Congress already made clear cable operators' obligations and, so far, the Commission has confirmed them. Rather than inviting a flood of disputes over the interpretation of Section 534(b)(7), the Commission should adopt its proposal to extend the viewability rule for three years in this proceeding and in the future should maintain those rules until cable operators complete their transition to all-digital service.

Respectfully submitted,



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